

# CITY COUNCIL REPORT



MEETING DATE: March 16, 2004

ITEM NO. 7

GOAL: Coordinate Planning to Balance Infrastructure

**SUBJECT**

**North Scottsdale Horseman's Park - 1-AB-2004**

**REQUEST**

Request to consider the following:

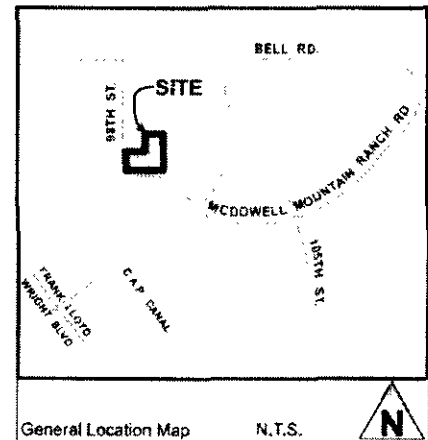
1. Abandon the 33-foot wide General Land Office (GLO) patent roadway and public utility easements for parcel 217-14-001 and parcel 217-14-035.
2. Dedicate a 45-foot half street right of way for McDowell Mountain Ranch Road.
3. Dedicate a 45-foot half street right of way for 98<sup>th</sup> Street.
4. Dedicate a 15-foot wide public access easement along the Old Verde Canal at time of lot development.
5. Adopt Resolution No. 6455 vacating and abandoning a portion of right of way and roadway easement

**OWNER**

North Scottsdale Horseman's Park LP IV  
480-948-1254

**APPLICANT CONTACT**

Charlie Potter  
Kimley-Horn & Associates  
602-944-5500



**LOCATION**

16039 N 98th St

**BACKGROUND**

**Background.**

The subject 33-foot wide GLO federal patent roadway and public utility easements were dedicated on the original GLO patent deed to assure access to the property.

This property is undeveloped. There is an existing stub street at the northwest corner of lot 35 which will provide future access to this site. 98<sup>th</sup> Street and McDowell Mountain Road right-of-way is required for dedication and will also provide access to this site.

**General Land Office Patent Easements (general information).**

- Within the City of Scottsdale there are General Land Office (GLO) lots or parcels of various sizes created by the Federal Small Tract Act. This act was passed in 1938 and repealed in 1976.
- These GLO lots were patented with 33 feet roadway and public utility easements typically "as near as practicable to the exterior boundaries".
- The city has viewed these patent roadway and utility easements as assured access at least until a local circulation plan is established.

- As GLO lots come in for development (i.e. lot splits, subdivisions or requesting building permits) staff requires city right-of-way dedications per our circulation plans. The city's transportation plan establishes a street system to replace the grid pattern created by the GLO easements.
- Any patent easements in excess of the current requirements to the circulation plans (including trails), roadway standards, and not required to insure access to any other lot, may be requested to be abandoned.
- On 1981, City Ordinance 1386 was adopted delegating the authority for the release of GLO easements to the Engineering Services Director.
- On March 2, 1999, the City Council repealed Ordinance 1386 and adopted Ordinance 3219 which requires the abandonment of the GLO patent roadway easements to go through the same public hearing process currently used for all right-of-ways, alleys, and roadway easements. The City Attorney's office has concluded that this process for consideration of GLO roadway abandonment satisfies legal requirements.

The subject GLO roadway easements were reserved on the original patent deed to assure legal access. Currently the 33-foot wide GLO easements are unimproved.

**Zoning.**

The site is zoned Single Family Residential Planned Community Development with Environmentally Sensitive Lands overlay (R1-35 PCD ESL). These zoning districts allow for single-family residential development.

**Context.**

The McDowell Mountain Ranch master planned community is located to the northeast of this site and the master-planned West World is located to the south.

**APPLICANT'S  
PROPOSAL****Goal/Purpose of Request.**

This request is to abandon the city's interest in the 33-foot GLO roadway and public utility easements located along the north, east, and west property lines of lot 35; and along the east property line of lot 36. There are no existing street improvements in this subject easement.

**Key Issues.****CITY IMPACT:**

- Eliminates the city's interest in the subject GLO easements.
- Dedicates right-of-way for 98<sup>th</sup> Street and McDowell Mountain Road.
- Dedicates a public access easement along the old Verde Canal.
- Maintains consistency with city street standards as approved by the City Council in the October 2003 Streets Master Plan.

**NEIGHBORHOOD IMPACT:**

- Eliminates potential roadway impacts along the side and rear areas of adjacent single-family residential lots.

**IMPACT ANALYSIS****Departmental Responses.**

City Department/Division participants concur with this abandonment request. See Department Issues Checklist (Attachment #1).

**Transportation Impact Summary:**

The subject parcel is located in a grid pattern street area north of McDowell Mountain Road and west of Thompson Peak Parkway (see Attachment #2). The property is located on the north side of McDowell Mountain Road and east of 98<sup>th</sup> Street, which are major collector roads that provide access to adjacent streets and properties.

These 33-foot wide GLO easements are not necessary as public street right-of-way due to the grid street system. The properties to the north and east have access from local subdivision streets. There is an existing stub street at the northwest corner of lot 35 which will provide access to the portion of this property north of the Old Verde Canal. A 45-foot half right of way will be dedicated along 98<sup>th</sup> Street and McDowell Mountain Ranch Road for future access to lots 35 and 36. These 33-foot wide GLO easements can be abandoned with no negative impacts to the area street system or access to the site.

**Trails Impact Summary**

A trail is planned along the Old Verde Canal and a public access easement will be dedicated across the canal.

**Community Involvement.**

The property owner has contacted the surrounding property owners. At the time of this report, the city has not received any objections.

**Community Impact.**

As described above, portions of the subject roadway easement will be dedicated for trail and right-of-way purposes. Those areas outside of the areas of dedication are not planned for improvement as part of the city's street system, city's trail system, or public utility infrastructure.

**OTHER BOARDS AND COMMISSIONS**

**Planning Commission.**

The Planning Commission heard this case on February 11, 2004. The Planning Commission recommended approval 4-0 on the expedited agenda, after taking comments from one community activist who stated concerns about the City's authority to abandon GLO easements and liability of the City for issuing building permits within GLO areas.

**STAFF  
RECOMMENDATION  
RESPONSIBLE  
DEPT(S)  
STAFF CONTACT(S)**


Staff recommends approval.

**Planning and Development Services Department**


Kira Wauwie  
Project Coordination Manager  
480-312-7061  
E-mail: kwauwie@ScottsdaleAZ.gov

Randy Grant  
Chief Planning Officer  
480-312-7995  
E-mail: rgrant@ScottsdaleAZ.gov

**APPROVED BY**

  
\_\_\_\_\_  
Randy Grant  
Chief Planning Officer

3/3/04  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Ed Gawf  
Deputy City Manager

3/3/04  
\_\_\_\_\_  
Date

**ATTACHMENTS**

1. Departmental Checklist
2. Context Aerial
3. Detail Aerial
4. Area Trails Plan
5. City Notification Map
6. February 11, 2004 Planning Commission Minutes
7. Resolution No. 6455  
Exhibit A. Legal Description  
Exhibit B. Graphic

# **CASE 1-AB-2004**

## **Department Issues Checklist**

### **Transportation**

☒ Support

A road will be extended to the north half of lot 35 at the time of development for access to that lot. 98<sup>th</sup> Street and McDowell Mountain Road will provide access to the properties upon the dedication of 45-foot half right-of-way for streets.

### **Trails**

☒ Support

A 15-foot wide public access easement will be dedicated along the Old Verde Canal.

### **Adjacent Property Owner Notification**

☒ Support

All adjacent property owners have been notified and have not objected to the abandonment.

### **Public Utilities**

☒ Support

Letters of support from the affected public utility companies are on file with the City of Scottsdale and no reservations are necessary.

### **Emergency/Municipal Services**

☒ Support

The new street(s) created with dedication and future development will provide emergency and service vehicle access.

### **Water/Sewer Services**

☒ Support

The Water Department supports this request.

### **Drainage**

☒ Support

The abandonment action will not alter drainage for this or adjacent properties. At the time of submittal for a development plan, the drainage impacts will be evaluated in more detail with the engineering plans.

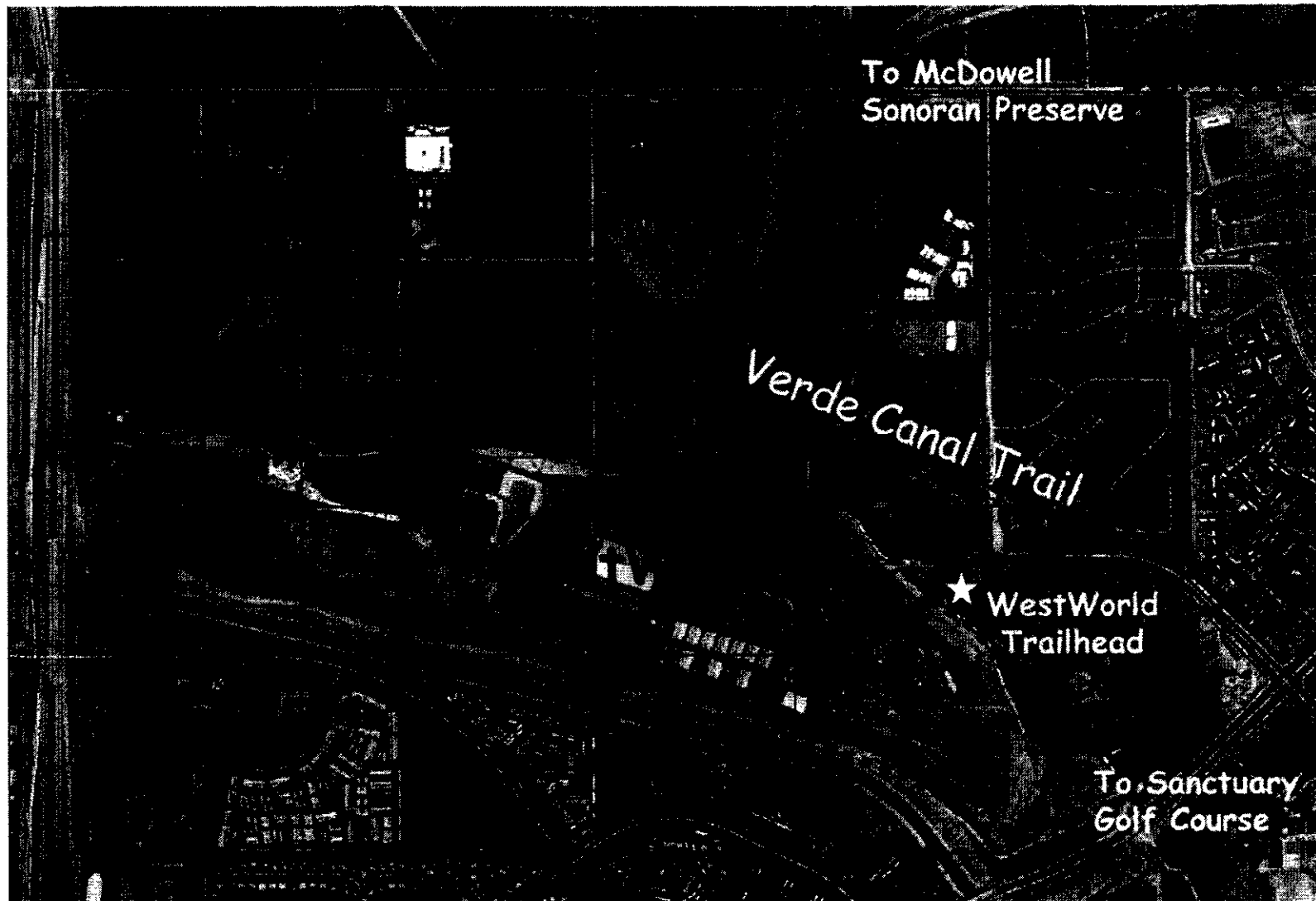


**ATTACHMENT #2**



**ATTACHMENT #3**

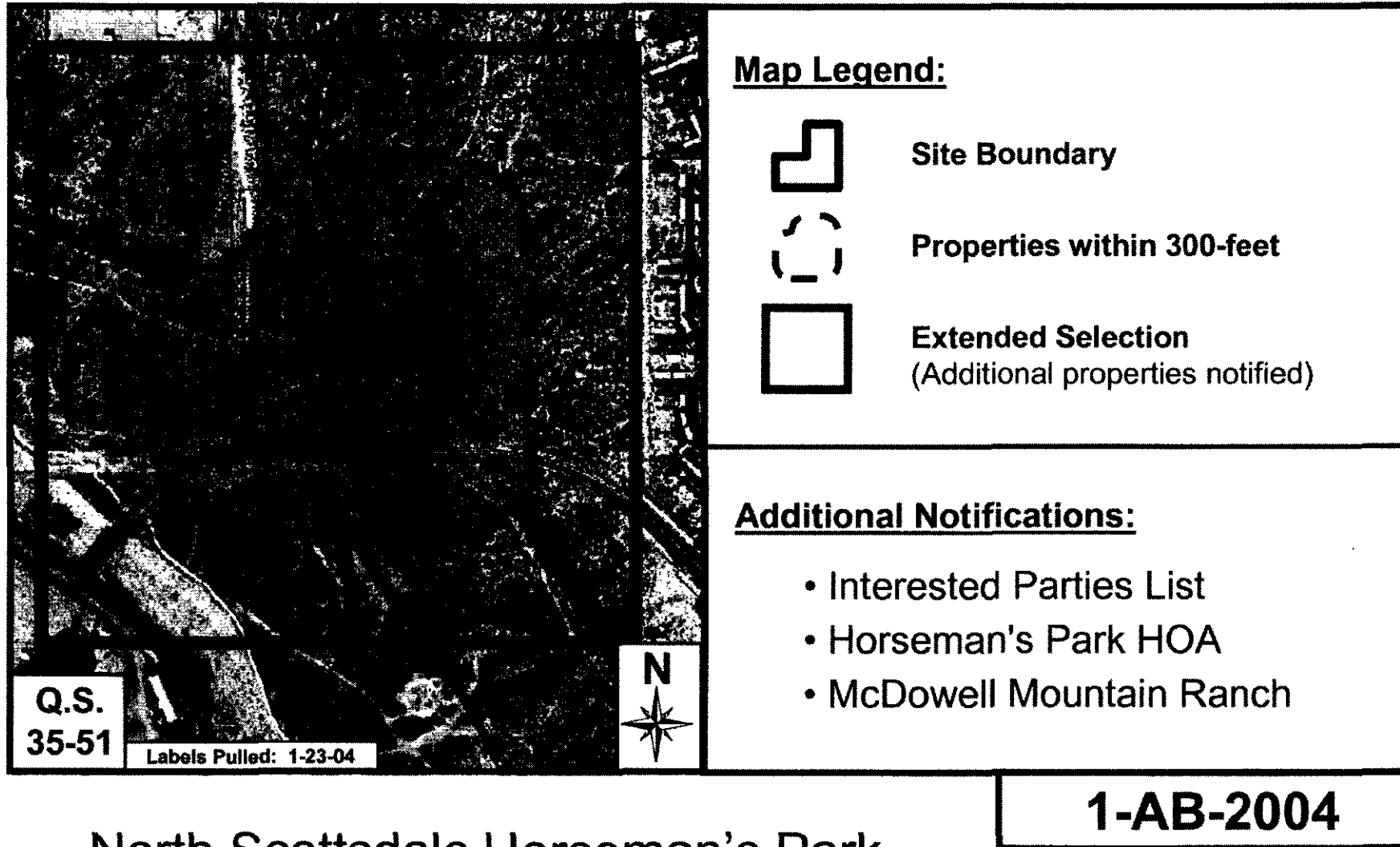
# Planned Trails in the Westworld Area



January 2004



## City Notifications – Mailing List Selection Map



North Scottsdale Horseman's Park

ATTACHMENT #5

**COMMISSIONER BARNETT** requested a correction to the January 14, 2004 meeting minutes. On page 2, under motion for election of Chairman and Vice Chairman he believed neither David Gulino nor Steve Steinberg could vote so the vote should indicated 4 to 0 as opposed to 6 to 0.

**COMMISSIONER BARNETT MADE A MOTION TO APPROVE THE JANUARY 14, 2004 MINUTES AS AMENDED. SECOND BY COMMISSIONER SCHWARTZ.**

**THE MOTION PASSED BY A VOTE OF FOUR (4) TO ZERO (0).**

**EXPEDITED AGENDA**

13-AB-2003 (Cave Creek Road Adjacent to the Mirabel Village 15 & 16) request by Site Consultants Inc, applicant, Terrabrook Mirabel LLC, owner, for abandonment of excess right-of-way easements located on the south side of Cave Creek Road between 96th Street & 100th Street Alignments.

**COMMISSIONER STEINKE MOVED TO FORWARD CASE 13-AB-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER SCHWARTZ.**

**THE MOTION PASSED BY A VOTE OF FOUR (4) TO ZERO (0).**

1-AB-2004 (North Scottsdale Horseman's Park) request by Kimley-Horn & Associates, applicant, North Scottsdale Horseman's Park LP IV, owner, to abandon the 33 feet wide General Land Office patent roadway and public utility easements in a portion of Government Lot 35 & Government Lot 36 located at the northeast corner of 98th Street and McDowell Mountain Ranch Road.

**MR. JONES** stated there is a letter email that was handed out to each of the commissioners' with regard to Case 1-AB-2004 and it is their prerogative whether to read it out loud or put it on the record the letter was received. Vice Chairman Steinberg requested it is noted for the record that the letter was received.

**MR. JONES** presented this case as per the project coordination packet. Staff recommends approval.

(VICE CHAIRMAN STEINBERG OPENED PUBLIC TESTIMONY.)

**LEON SPIRO**, 7814 E. Oberlin Way, spoke in opposition of this request. He stated this Planning Commission meeting is to be held under the Arizona open meeting statute. He requested all of his questions asked to staff and the Commission are answered and noted. He asked the City Attorney what the city is abandoning. He inquired if the city is only abandoning the city's rights to these

GLO easements and not any private property right should they exist. He noted Assistant City Attorney Bronski has stated when the city abandons the easements they are gone. It seems like there is some confusion existing in the City Legal Department.

He inquired if the City permits construction on these federal land patent roadway reservations commonly referred to as a 33-foot GLO roadway easement if permitted by the city is the city liable to the property owner. Should there ever be legal action taken because of a private property right lawsuit. He also inquired if these GLO easements are going to be blocked or constructed upon in anyway by the applicant.

He read an email correspondence to Council and some members of staff from John Aleo who is a citizen of Scottsdale that addressed the fact that GLO patent easements for roadway and public utilities were created under federal law. There are no provisions in federal law to abandon or remove said patent easements from a plat of survey. The letter addressed the legal issues related to abandoning GLO easements. The letter also references lawsuits involving GLO easements. The letter indicates that GLO easements should remain in perpetuity.

(VICE CHAIRMAN STEINBERG OPENED PUBLIC TESTIMONY.)

**MS. BOOMSMA** reported the Commission had a study session on GLO easements just a few weeks ago. The summary of the City's position at this time is that the City is abandoning only its interests in the general land patent office easement. And takes no position whether any private right exists over the easement as that is a matter between private parties and not a matter with the City. The City declines to take a legal position when it does not need to. Regarding liability the City Council has considered the issue at length and had a number of executive sessions and legal memorandum exchanged. It is their position and the City Council's decision as to what legal risk to take in planning matters as well as all other matters. The City Council directed staff and requested the Planning Commission limit inquiries to the planning issues involved as opposed to the legal risk involved.

She stated the third question was regarding whether the GLO easements would be constructed on. She replied that she had no knowledge whether these GLO easement would be constructed on and that would be an issue of whether they would be infringing on any private rights because they would not be infringing on any city rights.

**COMMISSIONER SCHWARTZ MOVED TO FORWARD CASE 1-AB-2004 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER STEINKE.**

**THE MOTION PASSED BY A VOTE OF FOUR (4) TO ZERO (0).**

**WRITTEN COMMUNICATION**

There was no written communication.

**ADJOURNMENT**

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 5:15 p.m.

Respectfully Submitted,

"For the Record " Court Reporters

RESOLUTION NO. 6455

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, VACATING AND ABANDONING A PORTION OF THE PUBLIC RIGHT-OF-WAY, APPLICATION NO. 1-AB-2004, PURSUANT TO THE PROVISIONS OF THE ARIZONA REVISED STATUTES, ARTICLE 8, CHAPTER 20, TITLE 28.

WHEREAS, application has been made to the Council of the City of Scottsdale for abandonment of a portion of public right-of-way; and

WHEREAS, A.R.S. Sec. 28-7202 provides that a city may dispose of a roadway or portion thereof when said property or portion thereof is no longer necessary for public use; and

WHEREAS, after notice to the public, hearings have been held before the Planning Commission and Council of the City of Scottsdale on the proposed abandonment of a portion of the public right-of-way, described in Application No. 1-AB-2004, within the City of Scottsdale; and

WHEREAS, it is in the opinion of the Council that the portion of public right-of-way described herein below is no longer necessary for public uses as roadway; and

WHEREAS, the City Council finds that consideration and other public benefit commensurate with the value of the property, giving due consideration to its degree of fragmentation and marketability, will be provided by the owner of the abutting property to the city.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Arizona, as follows:

Page two  
Resolution No. 6455

That the real property situated within the City of Scottsdale, Maricopa County, Arizona, and described in Exhibit "A" attached hereto and by this reference made a part hereof; be and the same is hereby vacated and abandoned subject to the reservation of easements for all existing utilities, and reservation of such rights as are specified in A.R.S. Sections 28-7210 and 28-7215. A map marked Exhibit "B" disclosing the area vacated is attached hereto and by this reference made a part hereof.

PASSED AND ADOPTED by the Council of the City of Scottsdale this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

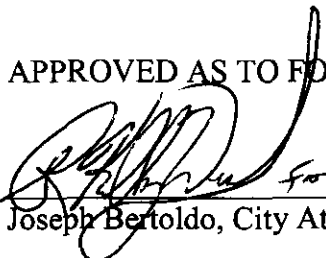
\_\_\_\_\_  
Mary Manross, Mayor

ATTEST:

Carolyn Jagger  
City Clerk

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Joseph Bertoldo, City Attorney

## EXHIBIT 'A'

### EXPLANATION

This legal description describes the abandonment of a portion of a 33 foot right of way and public utilities easement on Government Lots 35 and 36 in Section 5, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

### LEGAL DESCRIPTION

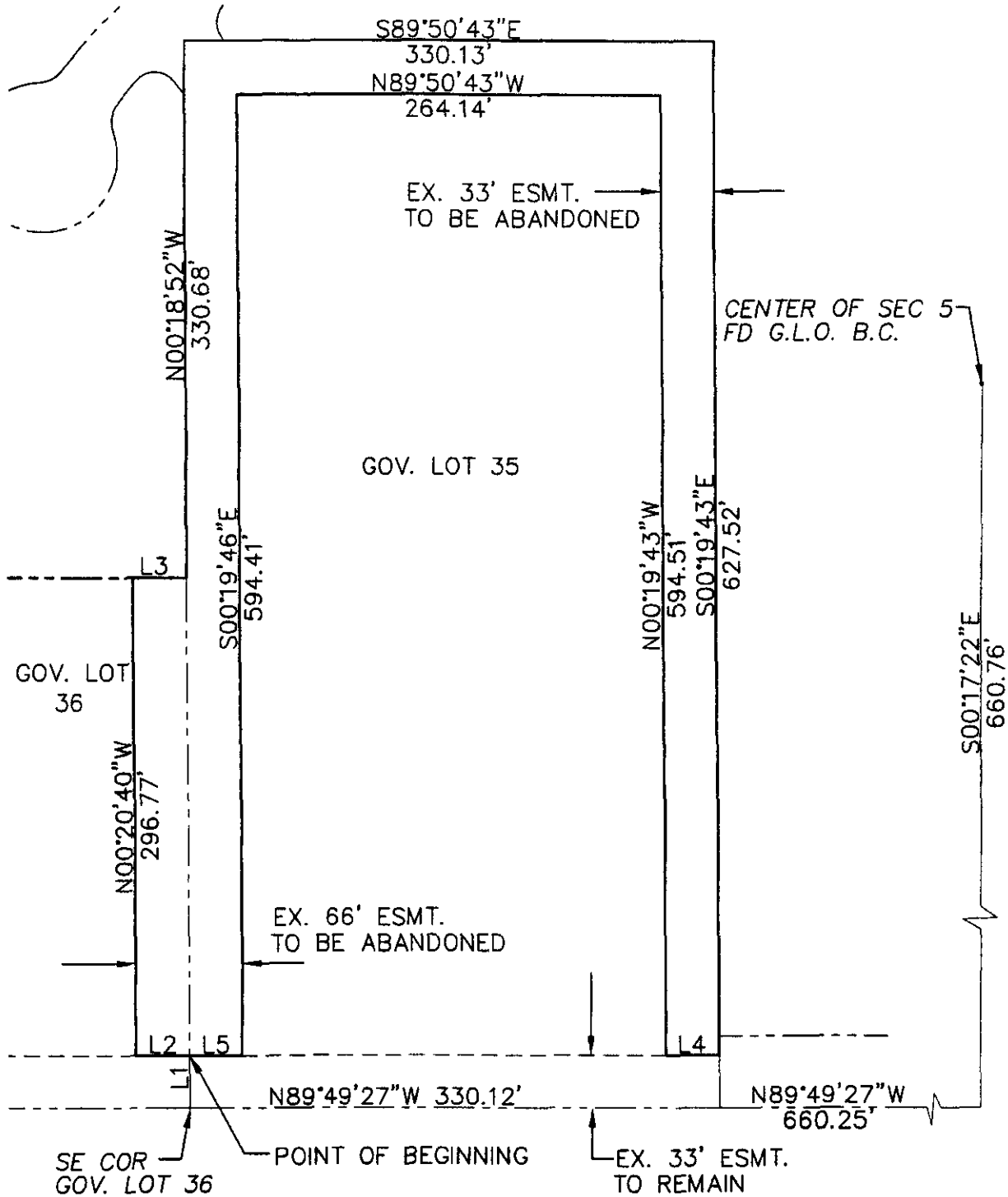
Being a portion of the Northwest Quarter of the Northeast Quarter of the Southwest Quarter of Section 5, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Center of said Section 5; thence South  $00^{\circ}17'22''$  East along the East line of the Northeast Quarter of the Southwest Quarter of said Section, 660.76 feet; thence North  $89^{\circ}49'27''$  West along the South line of the North Half of the Northeast Quarter of the Southwest Quarter of said Section, 990.37 feet to the Southeast Corner of Government Lot 36; thence North  $00^{\circ}20'40''$  West, 33.00 feet to the **Point of Beginning**;

Thence North  $89^{\circ}49'27''$  West, 33.00 feet; thence North  $00^{\circ}20'40''$  West, 296.77 feet; thence North  $89^{\circ}44'22''$  West, 33.00 feet to the Northeast Corner of Government Lot 36; thence North  $00^{\circ}18'52''$  West, 330.68 feet to the Northwest Corner of Government Lot 35; thence South  $89^{\circ}50'43''$  East, 330.13 feet to the Northeast Corner of Government Lot 35; thence South  $00^{\circ}19'43''$  East, 627.52 feet; thence North  $89^{\circ}49'27''$  West, 33.00 feet; thence North  $00^{\circ}19'43''$  West, 594.51 feet; thence North  $89^{\circ}50'43''$  West, 264.14 feet; thence South  $00^{\circ}19'46''$  East, 594.41 feet; thence North  $89^{\circ}49'27''$  West, 33.00 feet to the **Point of Beginning**.

Containing 1.38 acres (59,944 square feet), more or less

# EXHIBIT B



## LINE DATA

LINE	LENGTH	BEARING
L1	33.00'	N00°20'40"W
L2	33.00'	N89°49'27"W
L3	33.00'	N89°44'22"W
L4	33.00'	N89°49'27"W
L5	33.00'	N89°49'27"W



SCALE: 1"=100'